

shall be posted in appropriate government buildings and provided to newspapers of general circulation for publication. Comments received as form letters or petitions may be acknowledged as a group to the person or organization responsible for the form letter or petition.

(b) The notice shall contain time, place, and nature of hearing; the legal authority and jurisdiction under which the hearing is held; and location of and availability of the draft environmental impact statement or environmental assessment.

## PART 328—DEFINITION OF WATERS OF THE UNITED STATES

Sec.

328.1 Purpose.

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328.5 Changes in limits of waters of the United States.

AUTHORITY: 33 U.S.C. 1344.

SOURCE: 51 FR 41250, Nov. 13, 1986, unless otherwise noted.

### § 328.1 Purpose.

This section defines the term “waters of the United States” as it applies to the jurisdictional limits of the authority of the Corps of Engineers under the Clean Water Act. It prescribes the policy, practice, and procedures to be used in determining the extent of jurisdiction of the Corps of Engineers concerning “waters of the United States.” The terminology used by section 404 of the Clean Water Act includes “navigable waters” which is defined at section 502(7) of the Act as “waters of the United States including the territorial seas.” To provide clarity and to avoid confusion with other Corps of Engineer regulatory programs, the term “waters of the United States” is used throughout 33 CFR parts 320 through 330. This section does not apply to authorities under the Rivers and Harbors Act of 1899 except that some of the same waters may be regulated under both statutes (see 33 CFR parts 322 and 329).

### § 328.2 General scope.

Waters of the United States include those waters listed in § 328.3(a). The lat-

eral limits of jurisdiction in those waters may be divided into three categories. The categories include the territorial seas, tidal waters, and non-tidal waters (see 33 CFR 328.4 (a), (b), and (c), respectively).

### § 328.3 Definitions.

For the purpose of this regulation these terms are defined as follows:

(a) The term *waters of the United States* means

(1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) All interstate waters including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(iii) Which are used or could be used for industrial purpose by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as waters of the United States under the definition;

(5) Tributaries of waters identified in paragraphs (a) (1) through (4) of this section;

(6) The territorial seas;

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) (1) through (6) of this section.

(8) Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.